

IN THE COURT OF APPEALS OF GEORGIA

CHELSEA CAGLE,	)	
Appellant,	)	
	)	
v.	)	Case No. A24A1482
	)	
MIKE CARRUTH, <i>et.al.</i> ,	)	
	)	
Appellees	)	

**Brief of Appellant**

Appellant states the following as his opening Brief.

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## Part One – Statement of Facts and Proceedings Below

### **A – Introduction**

In this action in the nature of *quo warranto*, Appellant Chelsea Cagle (“Cagle”) appeals the grant of a motion for directed verdict in favor of Appellees, Mike Carruth (“Carruth”) and Karen Harden (“Harden”) (collectively, “Board Members”), who are both serving as members of the Walker County Board of Education. Cagle filed this action because, she claimed, the Board members are statutorily ineligible to serve in those capacities.

### **B – Proceedings Below**

Cagle filed an Application for Leave to File an Information in the Nature of *Quo Warranto* on September 22, 2023. R2, p. 5. On December 19, 2023, the trial court granted the application and entered a Writ of *Quo Warranto*. R2, pp. 11-12. On the same date, the trial court set a trial date of March 28, 2024. R2, p. 13. Also on that date, Cagle filed an Information in the Nature of *Quo Warranto*, in which she alleged that both of the Board Members had children who were employed as “system administrative staff” and were therefore prohibited from serving on the Board of Education by O.C.G.A. § 20-2-51(4)(A). R2, p. 16. On January 15, 2024,

the Board Members filed a Motion to Dismiss. R2, p. 26<sup>1</sup>. On March 12, 2024, the Board Members filed a Motion for Summary Judgment. R2, p. 90. On March 27, 2024 (i.e., the eve of trial), the trial court emailed the parties, advising them that it would hear arguments on the Motion for Summary Judgment first, and if denied, proceed to trial. R2, p. 141.

The trial court heard arguments on the Motion for Summary Judgment on March 28, 2024. R3 (transcript). After argument from the Board Members, Cagle argued that there was a dispute of fact that precluded grant of summary judgment and the trial court agreed and proceeded immediately to trial. R3, p. 10. Cagle presented her case. R3, pp. 10- 24. When she rested, the Board Members moved for a directed verdict, which was granted. R3, p. 26. The trial Court entered a written order granting a directed verdict and dismissing the Information in the Nature of Quo Warranto on March 30, 2024. R2, p. 3. Cagle filed a Notice of Appeal on April 25, 2024. R2, p. 1.

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<sup>1</sup> It is not in the record, but on March 6, 2024, the trial court emailed the parties and told them it was denying the Motion to Dismiss. In any event, the Motion to Dismiss was mooted by the order granting the Motion for Directed Verdict (see below).

### **C - Preservation of Issues on Appeal**

Cagle preserved the issues for appeal by obtaining the trial court's order granting the Board Members' Motion for Directed Verdict and dismissing her Information in the Nature of *Quo Warranto*. Cagle filed her notice of appeal within the time required by law, so her appeal is timely.

### **D - Statement of Material Facts<sup>2</sup>**

Cagle is a resident of Walker County. R3, p. 11. She is the owner of record of, and taxpayer for, real estate located in Walker County. R4. Carruth is serving as a member of the Walker County Board of Education, having been elected in the November 2022 general election. R3, p. 23 (Answer, ¶¶ 2-3). Harden is serving as a member of the Walker County Board of Education, having been elected in the November 2022 general election. *Id.*, ¶¶ 4-5. Justin Carruth is Carruth's son. *Id.*, ¶ 6. Scott Harden is Harden's son. *Id.*, p. 24, ¶ 8. The Chair of the Walker County Board of Education, Phyllis Hunter, testified that she knew the Board

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<sup>2</sup> In considering a motion for a directed verdict, the evidence must be construed in the light most favorable to the party opposing the motion. *Food Lion V. Williams*, 219 Ga.App. 352, 353, 464 S.E.2d 913 (1995). The facts recited herein are therefore based on the evidence presented at trial or admitted by the Board Members in their Answer, in a light most favorable to Cagle.

Members because the three of them served together on the Board of Education.

R3, p. 13. Hunter also testified that she knew the Board Members' sons, Scott Harden and Justin Carruth. *Id.* Justic Carruth is the director of [CTAE] and Scott Harden is the director of technology, both positions being with the Walker County Board of Education. *Id.* Both positions are administrative positions. *Id.*

## **Part Two – Enumerations of Error**

### ***A. The trial court erred by granting the Board Members' Motion for a Directed Verdict.***

1. The trial court failed to use the required "any evidence" test.
2. The Board Members did not move for a directed verdict with sufficient specificity for the trial court to be able to grant a directed verdict.
3. The trial court erroneously considered documents in the record, rather than the evidence presented at trial, to grant a directed verdict.

### ***B. Statement on Jurisdiction***

A final judgment is directly appealable. O.C.G.A. § 5-6-34(a)(1). The trial court's March 30, 2024, order is entitled as a "final judgment." Moreover, it actually is a final judgment in that it disposes of the case and is no longer pending in the trial court. In addition, a judgment refusing to grant an extraordinary

remedy is directly appealable. O.C.G.A. § 5-6-34(a)(7). This Court, rather than the Supreme Court, has jurisdiction of this appeal because this appeal is not one of the types reserved for the jurisdiction of the Supreme Court. The notice of appeal was filed within 30 days of the entry of the final judgment, so the appeal is timely.

### **Part Three – Argument and Citations of Authority**

#### **Standard of Review**

A directed verdict is proper only if there is no conflict in the evidence as to any material issue and the evidence introduced, with all reasonable deductions therefrom, shall demand a particular verdict. O.C.G.A. § 9-11-50(a). A motion for a directed verdict must state the specific grounds therefore. *Id.* A party that fails to mention a specific ground for a directed verdict in the trial court may not raise such ground on appeal. *Rowe v. Law Offices of Ben C. Brodhead, P.C.* 319 Ga.App. 10, 17 (2012). On appeal from the grant of a directed verdict, the appellate court considers only whether the directed verdict was proper for any of the specific grounds properly raised in the motion. *Nelson v. Polk County Historical Society*, 216 Ga.App. 756, 757, 456 S.Ed.2d 93, 95 (1995).

In determining whether any conflict in the evidence exists, the court must construe the evidence most favorably to the party opposing the motion for directed



verdict. The standard used to review the grant or denial of a directed verdict is the “any evidence” test. *Oglethorpe Power Corp. v. Estate of Forrister*, 332 Ga.App. 693, citing *Grubb v. Woodgleen Properties*, 220 Ga.App. 902, 903, 470 S.E.2d 455 (1996). Where there is “any evidence” or “some evidence” to support the nonmovant’s claims, a jury issue is created and a directed verdict is improper. *Wynn v. City of Warner Robbins*, 279 Ga.App. 42, 43, 630 S.E.2d 574, 576 (2006).

### **Summary of Argument**

The trial court erroneously granted a directed verdict by failing to use the “any evidence” test. Cagle presented evidence at trial that made a prima facie case in her favor.

The Board Members did not state the specific grounds for their Motion, instead just saying that Cagle failed to meet her burden. Therefore, a directed verdict was improper and cannot be affirmed as a matter of law.

The trial court erroneously considered documents filed in support of summary judgment rather than just the evidence presented at trial in granting a directed verdict.

## **Argument**

### **Applicable Law**

O.C.G.A. § 20-2-51(4)(A) provides, in pertinent part, “No person who has an immediate family member ... serving as ... system administrative staff in the local school system shall be eligible to serve as a member of such local board of education. As used in this paragraph, the term ‘immediate family member’ means a spouse, child, sibling, or parent....”

Under O.C.G.A. § 9-6-60, “The writ of quo warranto may issue to inquire into the right of any person to any public office the duties of which he is in fact discharging. It may be granted only after the application by some person either claiming the office or interested therein.” An individual who has been appointed or elected in a manner prescribed by law, who has a designation or title given to the individual by law, and who exercises functions concerning the public, assigned to the individual by law, is a public officer. *McDuffie v. Perkerson*, 178 Ga., 230, 173 S.E. 151 (1933). Quo warranto has always been recognized as the proper procedure for inquiring into the right to hold public office. *Conley v. Brophy*, 207 Ga. 30, 60 S.E.2d 122 (1950). Any citizen and taxpayer of a community may challenge the qualifications of a public official to hold office in that community. *Highsmith v. Clark*, 245 Ga. 158, 264 S.E.2d 1 (1980).

The Trial Court Did Not Apply the “Any Evidence” Test

There is no dispute that Justin Carruth and Scott Harden are the children of Carruth and Harden, respectively. There also is no dispute that they are employed by the Walker County school system (i.e., they are on the staff). Hunter testified that both Justin Carruth and Scott Harden are directors and that their positions are administrative. Moreover, the Board Members conceded in their motion for summary judgment that directors are “system administrative staff.” R2, p. 98.

The statute does not define what it means to be “system administrative staff.” When a term is not defined in a statute, courts generally look to the ordinary meaning of such terms. *Catoosa County v. Rome News Media, LLC*, 349 Ga.App. 123, 825 S.E.2d 507, FN 17 (2019). The undisputed testimony at trial was that Scott Harden and Justin Carruth are on the “staff” of the school “system” in “administrative” positions. They are system administrative staff.

After Cagle rested, the Board Members moved for a directed verdict, saying only, “I don’t believe [Cagle has] carried their burden today.” R2, p. 24. Cagle objected, saying that the Board Members counsel “hasn’t elaborated in what way we haven’t carried the burden....” *Id.* Nevertheless, Cagle briefly summarized how the evidence presented did in fact present a prima facie case. R2, pp. 24-25.

The trial court said, “I know there is not really a dispute of fact....” R4, p.

25. The trial court found that Cagle failed to establish that Justin Carruth and Scott Harden were directors. The trial court summarized its logic as:

You can call, I mean, they call maintenance people sanitation engineers. That doesn’t make them an engineer. So you can call a duck a bird or call them an elephant if you want. That doesn’t make it change.

R3, p. 25.

Because Cagle presented *some* evidence that the Board Members’ children were members of “system administrative staff,” the Board Members were not entitled to a directed verdict.

The Board Members Failed to Specify the Grounds for Directed Verdict

As noted above, a trial court cannot grant a motion for a directed verdict on an unspecified ground. In the present case, “not carrying a [general] burden” of proof is not specific. It certainly does not encompass calling someone a director when he is not a director. As already stated, Hunter testified, without dispute or qualification, that both Scott Harden and Justin Carruth occupy administrative positions.

If a defendant moves for a directed verdict but states no grounds, he is not entitled to the verdict. *Rogers v. Joyner*, 145 Ga.App. 179, 243 S.E.2d 249 (1978).

“And said grounds must be set for with specificity. *Turk v. Jackson Electric Membership Corp.*, 177 Ga.App. 631, 161 S.E.2d 430 (1968).

The Board Members did not make their Motion with *any* specificity. Saying an opponent “failed to carry her burden,” tantamount to “failed to prove her case,” is as general a statement as could be made. And the record is clear that Cagle did carry her burden. The trial court found that she had standing. R3, p.25. Proving that she had standing is part of her “burden.” The Board Members’ failure to specify how Cagle failed to carry her burden is fatal to their Motion for a directed verdict, so the Motion should not have been granted.

The trial court said that there was no evidence offered on what the duties of Scott Harden and Justin Carruth are. The Board Members did not bring their Motion on that basis, so it should not have been granted on that basis. And, [t]he directing of a verdict is a “very, very grave matter” *Georgia Power Co. v. Owens*, 124 Ga.App. 660, 665, 185 S.E.2d 294. “[A]s a vehicle of justice, [it] is proper only where there is no issue of material fact, or unless the proved facts, viewed from every possible legal point, would sustain no other finding than the one so directed.” *Able-Craft v. Bradshaw*, 167 Ga.App. 725, 726 (1983). “[T]he directed verdict is not a vehicle to obtain a judgment on the technical grounds that a

plaintiff has merely neglected to show some evidence material to his case.

Particularly, since the trial court may in its discretion permit the plaintiff to reopen his case and offer some neglected evidence. In such a case a directed verdict is generally improvident.” *Id.* A directed verdict is not a “mere technical device to dispose of plaintiffs who fail to present an instantly perfect prima facie case.” *Id.* at 727.

Cagle had no affirmative obligation to introduce evidence of the Board Members’ sons’ job duties. She obtained testimony that the sons were employees of the school system and that their jobs were “administrative.” She therefore introduced “some evidence” that the sons were “system administrative staff,” making the Board Members ineligible to serve on the board of education.

#### The Trial Court Erroneously Relied on the Record

Lastly, the trial court explicitly said on the record, “[B]ased on the documents filed in the summary judgment, I’m going to grant the directed verdict.” R3, p. 26. The trial court thereby abused its discretion, making a ruling on an incorrect legal standard. As noted above, a directed verdict must be based on the *evidence*, not on the *record*. And, a directed verdict can only be granted on the

grounds stated in support of it. It therefore follows that a directed verdict cannot be granted based on the grounds stated in a motion for summary judgment.

## **CONCLUSION**

For the foregoing reasons, the Motion for a directed verdict should not have been granted. The decision of the trial court should be reversed, and the case remanded for further proceedings.

This submission does not exceed the word count limit imposed by Rule 24.

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**CERTIFICATE OF SERVICE**

I certify that on June 4, 2024, I served a copy of the foregoing via U.S. Mail

upon:

Christopher Harden  
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S:/John R. Monroe

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John R. Monroe